IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4702 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALLABHBHAI POPATBHAI DOBARIA

Versus

DISTRICT MAGISTRATE 3RD SPECIAL LAND ACQUISITION

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR SJ DAVE, AGP for Respondent Nos.1, 2 & 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 21/07/2000

ORAL JUDGEMENT

This petition, under Article 226 of the Constitution of India, challenges the order of detention dated 15-4-2000 which has been passed by the District Magistrate, Rajkot in exercise of powers under Sec.3(2)

of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (`the Act' for short) against the petitioner with a view to prevent him from black marketing of essential commodities like kerosene and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene essential to the community.

2. Heard learned counsel for the respective parties and also gone through the affidavits filed on behalf of the State of Gujarat as well as Union of India.

3. Learned counsel for the petitioner has restricted his arguments on the point that there is a delay in passing the order of detention. He has argued that it is alleged vide para 4(a) of the grounds of detention that petitioner sold 50 tins of edible oil to M/s Patel Suryakant Bhagwandas & Company vide Bill No.24 dated 14-6-1999. He has submitted that a sample was taken from the tin of Bharat Brand after inspection of the shop of Patel Suryakant Bhagwandas by the Food Inspector, Palanpur on 19-6-1999 and though report of the public analyst was received by the District Supply Officer on 29-9-1999, Rajkot stating that the said sample was found to be adulterated with 90 per cent of pamolin oil, no action has been taken by the authority till the order of detention has been passed by the detaining authority on 15-4-2000. According to him, there is a delay of more than six months in passing the order of detention. Over and above, specific contention has been taken by the petitioner in his petition in para 4(e) that petitioner does not know English language and report of the public analyst supplied to the petitioner along with the compilation is in English and, therefore, effective representation could not be made by the petitioner against the order of detention which is violative of rights guaranteed under Article 22(5) of the Constitution of India and hence, order of detention is liable to be quashed and set aside.

4. He has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a

stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

5. It appears that the report of the Chemical Analyzer was received on 29-9-1999 and order of detention was passed by the authority on 15-4-2000 relying on the report and hence, there is a delay of six months in passing the order. Though affidavits have been filed by the respondents, no satisfactory explanation has been submitted by the respondents for the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained.

6. In view of the above, the petition is allowed. The order of detention dated 15-4-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Vallabhbhai Popatbhai Dobaria is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)
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